

1 IN THE UNITED STATES DISTRICT COURT
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FOR THE DISTRICT OF OREGON

3 UNITED STATES OF AMERICA,)
4 Plaintiff,) No. 05-60008-2-HO
5 v.) April 14, 2009
6 PIROUZ SEDAGHATY, et al.,) Eugene, Oregon
7 Defendants.)

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9 TRANSCRIPT OF PROCEEDINGS

10 BEFORE THE HONORABLE MICHAEL R. HOGAN

11 UNITED STATES DISTRICT COURT JUDGE

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2 (The following proceedings were had in chambers.)

PROCEEDINGS

4 THE COURT: Well, are we ready to give this
5 case a real trial date now?

6 MR. CARDANI: We hope so.

7 THE COURT: Okay. And have you talked about
8 that?

9 MR. CARDANI: Yes, we have.

10 MR. MATASAR: We have.

11 MR. WAX: We have.

12 THE COURT: I'm not shocked.

13 MR. MATASAR: We met for about an hour in the
14 prosecutor's office this morning.

15 THE COURT: It's good to have good lawyers.

16 | What do you hope to do then?

17 MR. MATASAR: We can't say that we agree.

18 THE COURT: I get to veto.

19 MR. MATASAR: Steve has the notes. Why don't
20 you redo our discussion.

21 MR. WAX: We thought --

22 | THE COURT: Yes.

23 MR. WAX: -- that we would propose that this
24 Friday we would file a pleading with you that will seek
25 clarification and some expansion on your ruling on the

1 classified information.

2 THE COURT: Okay.

3 MR. WAX: We, with respect to the classified
4 information, also need a ruling from you on the piece
5 that relates to our ability to communicate, Larry and
6 me, and the two of us with Mr. Sedaghaty about the
7 document that we had provided.

8 We think that after resolution of the issues
9 related to classified material that we would need --
10 figure -- 60 days and then file substantive motion
11 challenging the search.

12 And when we were talking with the government,
13 they had been suggesting maybe June, which would be more
14 or less the same time frame for that, assuming that
15 resolution on the classified issues takes place
16 relatively quickly.

17 From that point, we had slightly different
18 views on trial date. We're in agreement, I think, that
19 we need -- we both need to have a pretty clear sense of
20 what the trial would look like farther in advance of the
21 trial than is normally the case.

22 We're both anticipating some potentially pretty
23 complex evidentiary issues that relate to admissibility.
24 There might be some *Daubert* hearings with respect to an
25 expert or experts the government might present.

1 There are likely to be issues related to
2 witnesses from overseas, issues related to the
3 admissibility of some of the evidence that the
4 government might want to present. They gave us some new
5 discovery this morning that includes some things that
6 come from Russian FSB, the successor to the KGB.

7 So there are a host of trial type evidentiary
8 issues that are likely to consume a fair amount of time
9 and also whose resolution we think is important to help
10 us in knowing what the landscape of the trial is like.

11 Our sense, that meaning the defense, Larry and
12 I, are suggesting that a realistic trial date is next
13 winter. That if we deal with the suppression issues
14 over the summer, if we can have, perhaps, a real, you
15 know, heart-to-heart status conference first part of
16 September where we can then, you know, get a clear
17 picture from the government in terms of experts and
18 witnesses and define those issues, have some substantial
19 evidentiary hearings maybe the first or second, you
20 know, week in November, then we can have a trial
21 February-ish. That's what we would propose.

22 The government, at least this morning, was more
23 interested in a trial sooner than that.

24 MR. CARDANI: Do you want to speak for us?

25 MR. GORDER: Certainly. Your Honor, we agreed

1 with Mr. Wax that we thought that trying to get the
2 substantive motions filed, briefed, and heard before the
3 summer ends would be a good idea. And we were thinking
4 that they could file motions in early June. We would
5 ask for three or four weeks to respond, and try to get
6 the hearing in July sometime before Mr. Cardani takes
7 off for Italy.

8 And we just thought that a trial date in the
9 fall sometime, mid-October to mid-November, somewhere in
10 that time frame, would be appropriate to get the case
11 moving.

12 We all realize that the defendant came back to
13 the country in August of 2007. So the case has been
14 pending for over a year and a half now. And we're just
15 trying to force ourselves forward.

16 THE COURT: Right. I'm hopeful that both sides
17 in this matter will be willing to show their hand to --
18 for trial to the extent that we don't have to interrupt
19 the trial with hearings.

20 MR. MATASAR: And, Your Honor, that's one of
21 the issues here that has always been apparent is that
22 this is not an open file case like the others, so we
23 don't know their witnesses, and that's the exact concern
24 we have.

25 THE COURT: I have concern for you, too.

1 MR. MATASAR: Well, that's great. We
2 appreciate that, Your Honor. And so that's why we have
3 this different time frame.

4 We don't know -- when we hear for the first
5 time today about a secret Russian agent who listened in
6 to a phone call in 2000 and then destroyed the tapes,
7 and, you know -- or the tapes were destroyed, that is an
8 issue in itself.

9 One of their experts, so-called terrorism
10 expert, we saw him in the release issue hearings, we
11 probably want -- or we do -- or we will want to have a
12 Daubert hearing on him. He doesn't speak Arabic.
13 There's a lot of -- he doesn't have a Ph.D.

14 So these are real substantive, meaty issues
15 that we'll have once we know who their witnesses are.
16 If we get their witnesses at the last minute, you are
17 right, that's our concern. So we join you in that.

18 THE COURT: And I will tell you that if we have
19 a Daubert hearing, it's not going to come during the
20 trial. Everything is going to happen in advance.

21 MR. WAX: I think, Judge, all of us are hopeful
22 that we can deal with a lot of that sort of stuff and
23 evidentiary issues and chains of custody and
24 admissibility and coconspirator issues, you know,
25 several months in front of the trial is what seems to us

1 to make the most sense. I mean, normally we do that
2 stuff, you know, a week or two weeks before the trial.

3 But, for example, if the government is going to
4 be permitted to bring to the courtroom live a Russian
5 FSB agent to testify, which at least we understood this
6 morning is something that they are seriously
7 considering, that raises a host of issues about our need
8 to try, in whatever way we can, to do some investigation
9 in Russia. It raises another set of discovery type
10 issues.

11 You know, we were also talking about, you know,
12 the potential for other witnesses from the Middle East
13 the government may want to call or we may want to call.
14 And to get witnesses here from overseas, and from some
15 of the less than democratic countries from which some of
16 them may be coming, that's not going to happen
17 overnight.

18 So that's why we're thinking, you know, try to
19 deal with the more standard, if it is standard,
20 suppression type issue over the summer, and then get
21 us -- you know, defining what the scope of the trial is
22 so that we can have motions, which we're thinking, you
23 know, we could be in court for a week on motions to
24 suppress -- you know, motions in limine.

25 THE COURT: What do they do in there without

1 me? We'll open the door.

2 MR. MATASAR: Physically we'll open the door.

3 We can get you there physically there listening to
4 something else. I'll be --

5 THE COURT: I'll be surprised if that happens.

6 Okay.

7 MR. CARDANI: Judge, we don't have any trouble
8 with sharing witnesses much sooner than later in this
9 case. We realize they've got some work to do.

10 THE COURT: Yeah. Let's say that we get
11 suppression motions by mid-June, all right? And
12 whatever the issues are, suppression motions are really
13 not time-consuming for a court to decide one way or the
14 other. It sort of becomes clear during the hearing.

15 So when would you be willing to tip your hand
16 enough to give these folks something to respond to by
17 way of trial motions?

18 MR. CARDANI: Trial --

19 THE COURT: Not --

20 MR. CARDANI: You mean like witness lists?

21 THE COURT: Witness lists, expert lists,
22 exhibit lists, that sort of thing.

23 MR. CARDANI: You know, I think that they can
24 predict 90 percent of our witnesses right now. It's not
25 a big mystery as to who the majority of our witnesses

1 are going to be. I wouldn't want to be locked into, you
2 know, a set witness list.

3 THE COURT: Well, we want it to be inclusive,
4 in other words. And I would want you to think about
5 whether -- what your position is going to be on that.

6 You know that I require witness lists and you
7 know that I do it even though the Ninth Circuit says I
8 can't enforce it, but it makes trials go better, so I'm
9 going to continue to do it. You can't expect me to
10 follow the Ninth Circuit on that.

11 MR. CARDANI: Judge, along those lines, you say
12 you don't like surprises, this trial, we will tip our
13 hand, we will tell them who we are calling well in
14 advance. They can do their work.

15 Depending on who they may call may raise the
16 possibility of rebuttal witnesses --

17 THE COURT: Yeah.

18 MR. CARDANI: -- that are overseas witnesses.

19 THE COURT: Sure.

20 MR. CARDANI: And so to the extent that we can
21 have them tipping their hand as well as to who these
22 people may be, that's going to help shape the trial and
23 prevent delay.

24 And there really is a substantial likelihood of
25 that happening depending on who they call.

1 THE COURT: Are you going to give us your
2 witnesses?

3 MR. MATASAR: No. We were talking about other
4 scheduling matters.

5 MR. WAX: Well, in terms of experts, Judge, we
6 will, you know, provide the government with what we've
7 got.

8 THE COURT: Off the record.

9 (Discussion held off the record.)

10 THE COURT: Go ahead.

11 MR. WAX: I'm sorry, I forget where we are.

12 THE COURT: Are you going to tell us enough of
13 your witnesses and experts so that they can respond? I
14 don't want to pull a jury in and send them home for two
15 weeks.

16 MR. WAX: That won't happen. You know, I
17 appreciate Chris's response, we'll give them the stuff
18 in plenty of time in advance. What -- I give the same
19 answer. You know, in terms of experts, you know, we all
20 know that there are accounting issues in the case. And
21 at some point, we will have, you know, identified and
22 firmed up accountants. And we will, you know, provide
23 sufficiently in advance of trial, you know, who our
24 accounting experts are, and the essence of their
25 testimony is required under Rule 16. We're not going to

1 play games about that.

2 In terms of, you know, potential -- whatever we
3 call them, you know, terrorism witnesses, at this point,
4 we don't know if we're going to be bringing in any
5 terrorism type witnesses. We're going to have to know
6 that sooner rather than later. But when we get from the
7 government, as we did today, a, you know, set of reports
8 which open up an entirely, you know, new area of the
9 case, to a certain extent, we go back to, you know,
10 square one in terms of our assessment of what we need to
11 do.

12 You know, there are some fact witnesses who are
13 in, you know, the Middle East, who are potentially
14 desirable by either side. And, you know, we touched on
15 that briefly in our conference this morning.

16 At this point I don't know if the government
17 knows who it's planning on calling and neither do we.
18 And what we do will depend in part on what they do.
19 They have the ability to, you know, work the government
20 to get people in from overseas far more easily than we
21 do.

22 THE COURT: Please tell us who your accounting
23 type people and that sort of people are in time so we
24 don't have to interrupt the trial.

25 MR. WAX: Don't worry about that, Judge. That

1 will happen. Absolutely.

2 THE COURT: All right. Are you using outside
3 financial people or are you using people from the IRS?

4 MR. CARDANI: IRS.

5 THE COURT: Yeah. Who are you using?

6 MR. CARDANI: And also -- well, their
7 accountant -- their accountant is a fact witness. He'll
8 be a witness. We also have an IRS witness named Wooten.

9 MS. ANDERSON: Yes, Greg Wooten, TEGE.

10 MR. CARDANI: So those are the financial
11 experts.

12 MS. ANDERSON: Yes, he's Tax Exempt.

13 MR. CARDANI: Anybody -- and that's it, right?

14 MS. ANDERSON: Uh-huh.

15 MR. CARDANI: And then we have a terrorism
16 consultant expert, who they know very well. He
17 testified in the detention hearing, Evan Kohlmann. We
18 plan on using him as a witness. No mystery there. And
19 we have a computer expert that's an IRS guy, Jeremy.
20 They've talked to him. We've shared information. So
21 that's all right out there.

22 The only new wrinkle to any of this is the
23 stuff that we came back from Russia with, and that is
24 this Russian discovery, and the possibility of us being
25 able to get somebody from Russia here who may or may not

1 testify direct in the case in chief. We just don't
2 know. They've got that information now. It's been
3 translated. And they'll understand it.

4 But most of the issues are out there and self-
5 evident, and there are no secrets. We don't have any
6 secret witnesses. We don't have --

7 MR. MATASAR: There are no secrets except
8 secrets, the classified secrets.

9 MR. GORDER: We're not planning on introducing
10 the secrets.

11 MR. MATASAR: Right.

12 MR. CARDANI: Yeah. So I think that in terms
13 of your preparation, absent the Russian stuff, that it
14 is what it is on the expert side. And like I said,
15 we'll be willing to turn over witness lists sooner
16 rather than later.

17 What I'd like to avoid is us turning over a
18 witness list, getting nothing in return, and then having
19 a trial date dissolve, you know, and then that just, you
20 know, leads to problems. So if we have a finite trial
21 date and then we can back it up from there and say
22 what's a reasonable time to give them anything? And
23 they've got, by the way, a lot of our witness statements
24 already, a lot of the traditional Jencks Act material
25 has been turned over in seven batches of discovery.

1 But we'll agree to do that, turn it over well
2 in advance of trial, but we'd like to have some
3 predictability that we've got a hard trial date.

4 MR. WAX: We don't disagree with that, Judge.

5 MR. MATASAR: We don't disagree with that. We
6 think, though, remember -- well, we -- if there is going
7 to be well in advance the *Daubert* hearing, and we're
8 going to have to investigate the Russian stuff, we've
9 been sort of waiting sort of anticipating we were going
10 to have more discovery in the classified part than we
11 ended up with, so we've been kind of waiting to do a lot
12 of the international investigation and such that we've
13 done.

14 So in our view, October is just too soon to
15 have a trial. So we would much prefer the after
16 Christmas approach rather than the October approach
17 because there is so much international investigation to
18 do.

19 The accounting case we can try in June or July,
20 I would say July, at the end of July, but as evidence by
21 the -- as we said, Judge, the release hearing in this
22 case, you know, typically a release hearing takes
23 15 minutes. This one had experts from -- on the
24 telephone, and took hours and hours and days, so it's
25 anticipated to be a big, difficult matter. So that's

1 why I think October is too soon.

2 Plus, if we get the date we ask for now, it's
3 going to be pretty hard to ask for a continuance later
4 on.

5 THE COURT: You can ask.

6 MR. WAX: I mean, our goal would be not to
7 because if we're dealing with overseas witnesses and
8 we're dealing with the logistics of getting people into
9 the country, you know, if we have a firm date that we're
10 aiming for, and we all know that's when it's happening,
11 then we know when we've got to get the people here,
12 which may not be logistically possible in October which
13 is five months, six months.

14 MR. MATASAR: One more thing, I'm sorry, Judge,
15 but we've had nothing but good relations with the
16 government in this case. I would say that's fair to
17 say, the lawyer-to-lawyer discussions, just at the very
18 highest level. But the burden on us -- for them to say,
19 okay, now it's time to get the case going, they
20 literally told us today they went into the Lubyanka
21 Prison in Moscow, the two of them, and got like the red
22 carpet treatment. People were waving to them,
23 et cetera. We won't get that.

24 For us to investigate this stuff is just orders
25 of magnitude more difficult. So it just takes a while

1 for us to do it. And I think October, again, is just
2 unrealistic. We have good investigators.

3 THE COURT: I was locked in that courthouse
4 elevator in Moscow.

5 MR. MATASAR: Very nice. Well, maybe they look
6 at prosecutors different, but they got the red carpet
7 treatment. They didn't get locked in the elevator.
8 They got high fives and waves.

9 THE COURT: Their recordkeeping is kind of
10 fascinating.

11 MR. MATASAR: Not that fascinating if they
12 destroyed these tapes.

13 MR. GORDER: Well, they indicated that it's in
14 the ordinary course of business, after five years.

15 MR. MATASAR: Oh, really?

16 MR. WAX: I see. That's the old Soviet
17 ordinary course of business, destroy the tapes.

18 THE COURT: One of the fascinating things,
19 actually, about their system, because when you are there
20 to -- I was there supposedly to teach judges how to do
21 jury trials. And they have to -- not to say too much,
22 they were quite careful to point out to me that the
23 first jury trials in Russia were under Alexander I.
24 There was a hiatus in there. But -- and when I started
25 talking about getting things to trial, they said our law

1 requires that the case be tried in 60 days, but that
2 means 60 days from when the file is sent from these file
3 rooms to a chambers. And I looked at some files.
4 They'd been smoldering there for a long, long time.. I
5 couldn't read them, but I could read numbers. All
6 right. It was fascinating, really.

7 Okay. Just a second here. How long do you
8 anticipate for the trial itself?

9 MR. CARDANI: Up to two weeks is what our best
10 estimate is right now without knowing what kind of
11 defense to expect.

12 THE COURT: All right. I want to try the case
13 in November if we can get there. Let me just try these
14 dates on. I know it's not exactly what you folks have
15 asked for.

16 Actually, Lea, would you make double
17 photocopies of this, so they don't try to write it down
18 here. We can just walk through it. And we'll just
19 relax for a second.

20 (Discussion held off the record.)

21 THE COURT: All right. We'll go back on the
22 record. You see, I've suggested suppression motions be
23 filed by the 12th of June; that the hearings on those
24 motions be the 13th of July; and that witness list and
25 expert lists on the 10th of August; the trial motion

1 hearings on September 1st.

2 MR. WAX: Is that filed or to be in court?

3 THE COURT: That's to be -- well, I'm sorry, I
4 misspoke. That is just the motions to be filed on the
5 1st, and the hearing on 9/22. Yeah, you can see what I
6 did, I followed the hearings twice. And then October
7 13th, proposed jury instructions, voir dire, and
8 miscellaneous other trial motions, if there is some
9 little motions in limine or things like that, procedural
10 things.

11 MR. WAX: Independent of what we were saying
12 before, on September 22nd, I'm supposed to be in Alaska.
13 We've got a trip, be leaving around the 20th, and coming
14 back around October 3rd is what we have set. So if it's
15 possible to accommodate that, Kathleen has always wanted
16 to go to Alaska, and we've finally booked it.

17 THE COURT: All right. That's the -- tell me
18 that again. That's the 20th --

19 MR. WAX: Leaving around the 20th.

20 MR. CARDANI: While he's looking for that,
21 there will be in limine hearings on this that could
22 consume some time, so is that built into this? I see
23 filings date for the 13th of October.

24 MR. WAX: Or were you thinking of the in limine
25 type motions for the September 1 round? Is that what

1 you're thinking?

2 THE COURT: No. The motions you can file, I
3 want you to file early. But in a case like this, there
4 will be some little miscellaneous things later.

5 Why don't we have -- we'll move that pretrial
6 conference into November when Steve gets back. Let's
7 say the 9th of November. And on that date, we'll hear
8 other motions, later filed motions.

9 MR. CARDANI: In limine type of motions?

10 THE COURT: Yeah.

11 MR. CARDANI: Okay.

12 THE COURT: And preserve -- on -- Lea, preserve
13 a couple of days for each of those more -- when I say
14 motion hearings, I realize we have calendars on some of
15 those Tuesdays, and so on. We'll adjust.

16 MR. WAX: Judge, I'm sorry, I may have
17 misspoken. The day I'm not here is September 22nd.

18 THE COURT: Oh, okay. That's not what I
19 understood.

20 MR. WAX: Sorry. I'm supposed to leave --
21 we're going to leave on the 20th, and then I'll be back
22 in the office Monday, October 5. So it's the 22nd date
23 that's the -- that poses the problem for me.
24 October 26th was --

25 THE COURT: The problem is that the government

1 needs a chance to respond if you file things like
2 Daubert motions and so on on the 1st. And so -- well --

3 MR. WAX: Can you push that 22nd date back to
4 the October 9th or 13th or something?

5 Our sense, Judge, is we're better -- if the
6 16th of November is the trial date, that we'd all be
7 better off if we can keep the October 26th date for any
8 last round of hearings, so that in the last two weeks or
9 so we all know more or less what's coming in. If we
10 wait for the last round of hearings until the week
11 before the trial, I think it becomes more difficult for
12 both parties.

13 THE COURT: Okay. What about this: If we move
14 the trial motion hearings to October 13, get the jury
15 instructions, voir dire, and other trial motions on the
16 30th of October, pretrial conference and remaining
17 motions on the 16th, and start the trial on the 30th.

18 MR. MATASAR: Yeah, good.

19 THE COURT: The first week we will not have --
20 well, is Thanksgiving --

21 MR. WAX: Thanksgiving is the 26th.

22 THE CLERK: Jurors are often gone.

23 THE COURT: We can start it on the 30th.

24 MR. MATASAR: Fine.

25 THE COURT: And that first week's trial, the

1 schedule will go something like this: We'll pick the
2 jury and have opening statements on Monday and Tuesday.
3 We'll start the evidence on Friday the 4th. If any of
4 you want to know why, I'm happy to explain it.

5 MR. CARDANI: I think we're about to hear it.

6 THE COURT: The Beavers are here on the 3rd.
7 They are playing on a Thursday this year. And I'll have
8 150 people here, so I'm going to take the day before to
9 get ready.

10 MR. WAX: That's good, the jurors will
11 appreciate it.

12 THE COURT: They'll like it, too.

13 MR. CARDANI: Monday and Tuesday, jury
14 selection, opening. Wednesday and Thursday, down.

15 THE COURT: It won't take us two days to do
16 that, but we'll -- if there is some other little
17 pretrial things to clean up, we'll do that then.

18 MR. MATASAR: That's great.

19 THE COURT: And maybe I'll have ruled on the
20 exhibits by then, but if not, I'll do that before we
21 start taking any evidence --

22 MR. WAX: I think --

23 THE COURT: -- to the vast extent we can.

24 MR. WAX: -- Judge, what would be useful, which
25 we've done in some other cases, and we'll try to get

1 together with the government and see what we can agree
2 on and get as much stuff pre-admitted as we can.

3 THE COURT: I expect you to do that. If some
4 need rulings, I'll probably try to make them in advance,
5 too.

6 MR. WAX: So in terms of other stuff that we
7 had had on our list that we hoped to address today,
8 Judge, we have three motions pending on which we need
9 rulings. The one is the communication between and among
10 the defense about the document. And I don't know if you
11 want us to argue that at all right now but --

12 THE COURT: No.

13 MR. WAX: -- we need a ruling on that so we can
14 figure out what -- where to go with that.

15 In the nonclassified discovery motions, we
16 still disagree with the government about the scope of
17 their *Brady* obligation, what is *Brady* material. And we
18 argued that previously about character type evidence, if
19 you want to call it that, although I think it goes
20 directly to the intent issues. We just need a ruling on
21 that because we're in disagreement.

22 We had asked previously for a ruling on the
23 computer discovery issues. It appears as though we have
24 that resolved. We've had two meetings now with the
25 government expert and we're awaiting a report which we

1 understand will give us not the actual documents but
2 will give us a very direct guide. So in terms of our
3 previous request for you to rule on the discovery of
4 computer issues, I don't think you need to attend to
5 that today. It looks like we have that worked out.
6 Which means, I think, that we have two things on the
7 table on which we need rulings, as we see it.

8 THE COURT: Do either of you want to be heard
9 further on that?

10 MR. CARDANI: Well --

11 MR. GORDER: Let me jump in, Your Honor, at
12 least on the issue about them communicating about this
13 sealed document.

14 THE COURT: Yes.

15 MR. GORDER: As you know, Mr. Cardani and I are
16 not privy to it, so we are kind of shooting in the dark
17 here. You've had an opportunity to review the
18 government's pleadings, and may be able to make some
19 decisions as to how relevant that would be. If you feel
20 it's necessary, they can go through the court security
21 officer and arrange somehow -- they would probably have
22 to go to Washington, D.C. to discuss what they want to
23 discuss between themselves.

24 MR. CARDANI: Or with the court.

25 MR. GORDER: Or with the court. If it's with

1 the court, I think we would ask that Mr. Sandoval be
2 allowed to participate. And beyond that, Mr. Cardani
3 and I really can't take a position because we don't know
4 what you're talking about.

5 THE COURT: When you filed the brief, did the
6 court security officer bring a computer out here?

7 MR. WAX: Yes, yeah, we worked on that,
8 although I think at the end of the day, she believed
9 that we weren't putting anything class -- anything that
10 required that kind of treatment, and that we could have
11 actually just done it on our system.

12 THE COURT: You want to go beyond that?

13 MR. WAX: Well, what we've requested with
14 respect to the document in our communication is --

15 THE COURT: We don't need any more on that.

16 Now, on other discovery, where are you?

17 MR. CARDANI: Well, I think we're just fine.
18 The disagreement seems to be about if there are acts
19 of -- noncriminal acts, activity that's not criminal,
20 and I don't mean to belittle the request, but in us
21 screening everything that we've turned over, which has
22 been substantial, is every time that we have evidence of
23 Mr. Sedaghaty not involved in criminal activity is that
24 discoverable, we think not, under Rule 16, under *Brady*,
25 *Jencks*, *Giglio*, anything. So I don't know what more --

1 is there anything else to the disagreement?

2 MR. MATASAR: I mean, we think it is. Not so
3 much helping an old lady across the street but a lot of
4 the things that we feel are in the government's file
5 cabinet, if you will, that they haven't turned over
6 include positive things, comments about the defendant,
7 comments by the defendant, which we believe would be
8 useful in preparing for trial, and maybe even
9 admissible.

10 MR. WAX: It goes directly to his intent.

11 MR. MATASAR: State of mind.

12 MR. WAX: State of mind, which is one of the
13 key elements in the indictment that, you know, he did
14 certain things with respect to the tax return for a
15 particular purpose. And we believe that evidence on
16 classified and unclassified that reflects on his intent
17 with respect to his activities to engage in peaceful,
18 charitable, and helpful things, as opposed to violent,
19 pro-mujahideen things, goes directly to an element the
20 government has alleged, and is therefore exculpatory.
21 And that's our disagreement.

22 THE COURT: Okay. That's fine. I understand
23 that. That's what I thought. But it's refreshed for
24 me. I'm going to give you a little minute order, order
25 in writing on these things.

1 MR. MATASAR: We had written -- I think as far
2 as whether we can talk about the secret thing, we -- our
3 papers pretty much reflect our arguments, so we really
4 don't have to restate it here. I think we have two
5 papers.

6 THE COURT: I have them.

7 MR. MATASAR: You have them, yeah, I know that,
8 so we're good.

9 THE COURT: I agree. Anything else? I've got
10 bankers here from three banks -- four banks right now.

11 MR. MATASAR: Great. Throw them in jail, or at
12 least get them indicted.

13 THE COURT: They feel like they are in jail
14 already.

15 MR. CARDANI: Judge, will this schedule be
16 reduced to a minute order?

17 THE COURT: You'll get a better copy than this.

18 (The proceedings were concluded at 2:26 p.m.)

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1 CERTIFICATE

2 I, Deborah Wilhelm, Certified Shorthand Reporter
3 for the State of Oregon, do hereby certify that I was
4 present at and reported in machine shorthand the oral
5 proceedings had in the above-entitled matter. I hereby
6 certify that the foregoing is a true and correct
7 transcript, to the best of my skill and ability, dated
8 this 30th day of June, 2009.



Deborah Wilhelm
Deborah Wilhelm, RPR
Certified Shorthand Reporter
Certificate No. 00-0363